

**Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

**Listing of Claims:**

1. (Currently Amended) An isolated nucleic acid construct comprising viral genomic nucleic acid where the viral genomic nucleic acid is (1) (i) herpes virus genomic nucleic acid or (ii) a nucleic acid sequence that has at least 80% sequence homology to a herpes virus genomic nucleic acid, and (2) comprises, at least two endogenous gene expression regulatory units which each comprise an endogenous promoter that is capable of expression in a mammalian cell, where the endogenous promoter of the units ~~are active at the same phase in the herpes viral life cycle~~ are all immediate early, all early or all late promoters, wherein:

- (a) the promoters are each operably linked to a separate coding sequence encoding a polypeptide for expression;
- (b) the viral genomic nucleic acid is from 1 to 50 kb in length; and
- (c) more than 10% and up to 95% of the viral sequences which are present in the region of the viral genome corresponding to that between the 5' and 3' ends of the viral genomic nucleic acid in the construct are absent from the construct; and
- (d) the endogenous gene expression regulatory units are different to one another.

2. (Cancelled)

3. (Currently amended) An isolated nucleic acid construct according to claim 1, wherein the endogenous gene expression regulatory units ~~are comprise~~ immediate early genes promoters or early viral genes promoters.

4-6. (Cancelled)

7. (Currently Amended) An isolated nucleic acid construct according to claim 1, wherein the herpes virus is herpes simplex virus (HSV).

8. (Currently Amended) An isolated nucleic acid construct according to claim 7, wherein the HSV is selected from the group consisting of HSV-1 and HSV-2.

9. (Currently Amended) An isolated nucleic acid construct according to claim 7, wherein the viral genomic nucleic acid is derived from a herpes simplex virus and the endogenous gene expression regulatory units each comprise an endogenous promoter selected from the group consisting of the ICP0, ICP4, ICP22 and ICP27 gene promoters.

10. (Currently amended) An isolated nucleic acid construct according to claim 7, wherein the viral genomic nucleic acid is from a herpes simplex virus and the endogenous promoters of the gene expression regulatory units are HSV tegument protein gene promoters.

11. (Cancelled)

12. (Currently Amended) An isolated nucleic acid construct according to claim 1, wherein all of the coding sequences expressed by the endogenous gene expression regulatory units are derived from the same organism.

13. (Currently Amended) An isolated nucleic acid construct according to claim 1, wherein two or more of the coding sequences encode antigens.

14. (Currently Amended) An isolated acid construct according to claim [[1]] 13, wherein the antigens are antigens from a pathogen.

15. (Cancelled)

16. (Currently Amended) An isolated nucleic acid construct according to claim 1, wherein the absent region of (c) comprises part or all of the intervening sequences between two of the adjacent endogenous gene expression regulatory units linked to the coding sequences.

17. (Currently Amended) An isolated nucleic acid construct according to claim 1, wherein the absent region of (c) comprises one or more of the genes present in the region of the viral genome other than those of the endogenous gene expression regulatory units used to express the coding sequences.

18. (Currently Amended) An isolated nucleic acid construct according to claim 16, wherein the viral genomic nucleic acid is from HSV-2 and the viral sequences have been removed from the construct by one of more of the following techniques: (a) partial Eco RI digestion and religation; (b) Bst 11071 and Scal digestion and religation; (c) Nsi digestion and religation; (d) a partial digestion with a BstXI enzyme and then religation to remove sequences between ICP27 and ICP0; (e) a complete digestion with a BspHI enzyme, followed by a partial digestion with a BsiWI enzyme and then religation to remove sequences adjacent to ICP22; (f) a digestion with a SrfI enzyme and then religation to remove sequences between ICP4 and ICP0; and (g) total digestion with BstXI enzyme and then religation to remove sequences between ICP27 and ICP0.

19. (Currently Amended) An isolated nucleic acid construct according to claim 16, wherein the viral genomic nucleic acid is from ~~HSV-1~~ HSV-2 and comprises the ICP 0, ICP 4, ICP 22 and ICP 27 promoters operably linked to their natural coding sequences.

20. (Cancelled)

21. (Currently Amended) An isolated nucleic acid construct according to claim 1, wherein the endogenous gene expression regulatory units operably linked to the coding sequences are endogenous promoters.

22-25. (Cancelled)

26. (Previously presented) Coated particles, suitable for delivery from a particle-mediated delivery device, which particles comprise carrier particles coated with the nucleic acid construct of claim 1.

27. (Original) Coated particles according to claim 26, wherein the carrier particles are gold or tungsten.

28. (Original) A dosage receptacle for a particle mediated delivery device comprising coated particles according to claim 26.

29. (Original) A particle mediated delivery device loaded with coated particles according to claim 26.

30. (Original) A particle mediated delivery device according to claim 29 which is a needleless syringe.

31. (Withdrawn) A method of obtaining expression in a mammalian cell of a polypeptide of interest, which method comprises transferring into said cells a nucleic acid construct of claim 1.

32. (Withdrawn) A method according to claim 31, wherein the construct is delivered directly into a subject.

33. (Withdrawn) A method according to claim 32, wherein the construct is delivered by injection, transdermal particle delivery, inhalation, topically, orally, intranasally or transmucosally.

34. (Withdrawn) A method according to claim 32, wherein the construct is delivered by needleless injection.

35. (Withdrawn) A method according to claim 34, wherein the nucleic acid construct is coated onto carrier particles.

36. (Withdrawn) A method of nucleic acid immunisation comprising administering to a subject an effective amount of coated particles, which particles are suitable for delivery from a particle-mediated delivery device, the particles comprising carrier particles coated with a nucleic acid construct of claim 1.

37. (Currently Amended) A method of generating a nucleic acid construct for direct administration to a subject to elicit an immune response in the subject, the method comprising: (a) inserting herpes virus genomic nucleic acid or a sequence with at least 80% sequence homology into a vector backbone, said viral genomic nucleic acid being from 1 to

50kb in length and comprising at least two endogenous gene expression regulatory units which are different to one another, each comprise comprising an endogenous promoter capable of expression in a mammalian cell, where the endogenous promoters of the units are ~~active at the same phase in the herpes virus lifecycle all immediate early, all early or all late promoters~~, and (b) either prior to, at the same time, or after inserting the viral genomic nucleic acid into the vector backbone, deleting from the viral genomic nucleic acid some or all of the viral sequences, apart from the endogenous gene expression regulatory units, which are present in the region of the viral genome corresponding to that between the 5' and 3' ends of the viral genomic nucleic acid of the construct so that more than 10% and up to 95% of the viral sequences which are present in the region of the viral genome corresponding to that between the 5' and 3' ends of the viral genomic nucleic acid in the construct are absent from the construct.

38. (Previously presented) A method according to claim 37, further comprising coating the constructs on particles suitable for delivery from a particle mediated delivery device.

39. (Withdrawn) Coated particles, suitable for delivery from a particle-mediated delivery device, which particles comprise carrier particles coated with a nucleic acid construct generated by a method as defined in claim 36.

40. (Withdrawn) A dosage receptacle for a particle mediated delivery device comprising coated particles according to claim 39.

41. (Withdrawn) A particle mediated delivery device loaded with coated particles according to claim 40.

42. (Withdrawn) A method of obtaining expression in a mammalian cell of a polypeptide of interest, which method comprises transferring into said cells a nucleic acid construct generated by a method according to claim 37.

43. (Withdrawn) A method of nucleic acid immunisation comprising administering to a subject an effective amount of coated particles, which particles are suitable for delivery from

a particle-mediated delivery device, the particles comprising carrier particles coated with a nucleic acid construct generated by a method according to claim 37.

44. (Withdrawn - currently amended) Use of a nucleic acid construct of claim 1 ~~for use~~ in nucleic acid immunization.

45. (Currently Amended) An isolated nucleic acid construct according to claim 1, where the construct is a cosmid or a plasmid.

46. (Currently Amended) An isolated nucleic acid construct according to claim 1, wherein the construct lacks viral packaging sequences.

47. (Currently Amended) An isolated nucleic acid construct according to claim 1, wherein the construct lacks a viral origin of replication.

48. (Currently Amended) An isolated nucleic acid construct according to claim 1, where more than 20% and up to 85% of the viral genomic sequences are deleted.

49. (Currently Amended) An isolated nucleic acid construct according to claim 1, where more than 30% and up to 75% of the viral genomic sequences are deleted.

50. (Currently Amended) An isolated nucleic acid construct according to claim 1, where the endogenous expression regulatory units are operably linked to their natural coding sequences.

51. (Currently Amended) An isolated nucleic acid construct according to claim 1, wherein the sequence for more than 500bp upstream and downstream of the promoter of the endogenous gene expression units is identical to, or has at least 90% homology to, the endogenous sequences of ~~the~~ a herpes virus genome.

52. (Currently Amended) An isolated nucleic acid construct according to claim 1, wherein two or more of the endogenous gene regulatory units are from consecutive genes in the herpes virus genome.

53. (Currently Amended) An isolated nucleic acid construct according to claim 9, wherein the three or more of the endogenous gene regulatory units are from consecutive genes in the herpes virus genome.